

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff

DECISION and ORDER

-vs-

11-CR-6083

ROBERT W. MORAN, JR. GINA TATA, TIMOTHY STONE, DONNA BOON, GORDON MONTGOMERY, and JEFFREY TYLER

Defendants

Siragusa, J. This case was referred by order of the undersigned, docketed May 2, 2011, ECF No. 2, to Magistrate Judge Marian W. Payson, pursuant to 28 U.S.C. § 636(b)(1)(A)-(B). On June 20, 2012, Defendant Timothy Stone filed a omnibus motion seeking various forms of relief, including a separate trial pursuant to Rules 8 and 14, ECF No. 209. On June 22, 2012, Defendant Robert W. Moran, Jr., filed a motion for a separate trial of Counts 3 and 4 of the superseding indictment due to misjoinder and/or for severance pursuant to Rule 8(b), ECF No. 211. On June 22, 2012, Defendant Gina Tata filed a second omnibus motion seeking various forms of relief, including relief from joinder and severance under Rule 14, ECF No. 212. On September 10, 2012, Defendant Donna Boon filed an omnibus motion seeking various forms of relief, including severance pursuant to Rule 14, ECF No. 277, and then December 11, 2012, she filed a supplemental motion for a separate trial on grounds of misjoinder, ECF No. 337. On November 5, 2012, Defendant Gordon Montgomery filed a omnibus motion seeking various forms of relief, including severance, ECF No. 312. Finally, on January 3, 2013, Defendant Jeffrey Tyler

filed omnibus motion seeking various forms of relief, including a separate trial, ECF No. 345. On November 26, 2013, Magistrate Judge Payson filed a Report and Recommendation ("R&R"), ECF No. 441, recommending that the Court deny all Defendants' motions relating to misjoinder, severance, and separate trials.

The time has passed for Defendants Gina Tata, Timothy Stone, Gordon Montgomery, and Jeffrey Tyler to file any objections to the R&R, and none have been filed. On December 10, 2013, Defendant Robert W. Moran, Jr., filed objections to the R&R, maintaining that he should be tried separately from the narcotics co-defendants based upon misjoinder and/or severance, ECF No. 444. Subsequently, on January 28, 2014, Defendant Donna Boon filed objections to the R&R, maintaining that there is no nexus between the narcotics counts charged in the superseding indictment and the "violent crime in aid of racketeering" ("VICAR") counts, ECF No. 466.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a *de novo* determination of those portions of the R&R to which objections have been made. Upon a *de novo* review of the R&R, and after considering the objections of Defendants Robert W. Moran, Jr., and Donna Boon, the Court accepts Magistrate Judge Payson's proposed findings and recommendations.

Consequently, for the reasons set forth in Magistrate Judge Payson's R&R, ECF No. 441, the applications of Defendants Donna Boon, Gordon Montgomery, and Jeffrey Tyler that the narcotics counts be severed from the VICAR counts are denied.¹ Likewise,

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The Court notes that, while in her R & R, Magistrate Judge Payson recommended that the applications of Boon, Montgomery and Tyler be denied, she further recommended that it be without prejudice to renew before the trial court or before the pretrial conference.

the Court based upon the reasons articulated by Magistrate Judge Payson denies the applications of Defendants Robert W. Moran, Jr., Gina Tata, and Timothy Stone to sever the VICAR counts in the superseding indictment from the narcotics counts. Finally, as to Defendant Timothy Stone's argument that he will be prejudiced if he is tried with the other VICAR defendants, the Court, for the reasons set forth by Magistrate Judge Payson, denies severance on that basis.

IT IS SO ORDERED.

Dated: Rochester, New York
February 13, 2015

ENTER:

/s/ Charles J. Siragusa
CHARLES J. SIRAGUSA
United States District Judge